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MAILED

APR 05 2010

OFFICE OF PETITIONS

In re Application of	:	
Kraal et al.	:	
Application No. 09/630,918	:	ON PETITION
Filed: 08/02/2000	:	
Attorney Docket No. 200-0646	:	

This is a decision on the petition under 37 CFR 1.181, filed December 1, 2008, to withdraw the holding of abandonment in the above-identified application. The petition was recently forwarded to the undersigned for a decision on the merits. The Office sincerely apologizes for any inconvenience.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision on the petition under 37 CFR 1.181 must be submitted with TWO (2) MONTHS of the mailing date of the decision. The request for reconsideration should include a cover sheet entitled "Renewed Petition Under 37 CFR 1.181."

On June 13, 2008, the Office mailed a Notice of Allowability, which set a three-month statutory period for reply to avoid abandonment. Specifically, the Notice of Allowability indicated that corrected drawings (as "replacement sheets") must be submitted, including the following changes required by the attached Examiner's Amendment/Comment, which stated:

Drawings

3. The drawings were received on 01/15/2004 are not annotated as "replacement sheets". Correction before payment of the issue fee is required.

The above-identified application became abandoned by operation of law on September 14, 2008. On October 7, 2008, the Office mailed a Notice of Abandonment.

In the present petition, petitioner asserts that the Notice of Allowability was improper, and thus, no response was required. Petitioner avers that the Office improperly held the application for lack of a reply to the Notice. Specifically, petitioner states:

1. In connection with the above-identified application, the United States Patent and Trademark Office mailed an Office Action on September 26, 2003, indicating that the drawings were objected to under 37 C.F.R. 1.84 and 1.83(a) and that proposed drawing corrections or corrected drawings were required, as evidenced by Exhibit A.
2. On December 26, 2003, Counsel for Applicants filed an Amendment along with proposed corrected drawings for approval, as evidenced by Exhibit B.
3. On January 13, 2004, Counsel for Applicants filed corrected drawings, as evidenced by Exhibit C.
4. The United States Patent and Trademark Office mailed an Office Action on March 22, 2004, indicating that the corrected drawings filed on January 6, 2004 (sic January 13, 2004) were accepted, as evidenced by Exhibit D.
5. Subsequently, a Notice of Allowance was mailed on June 13, 2008, along with a Notice of Allowability, which required corrected drawings and stated that the drawings received on January 15, 2004 were not annotated as "replacement sheets" and that correction before payment of the issue fee was required, as evidenced by Exhibit E.
6. Since the corrected drawings filed in paragraph 4 were previously accepted by the Examiner, Applicants were not required to file corrected drawings annotated as "replacement sheets" as requested in paragraph 5, as evidenced by Exhibit F.
7. The United States Patent and Trademark Office mailed a "Notice of Abandonment" on October 7, 2008 to Counsel for Applicants stating that no corrected drawing had been received as required by, and within the three-month period set in, the Notice of Allowability (Form PTO-37), as evidenced by Exhibit G.

Petition, pp 1-2.

Pursuant to 37 CFR 1.135:

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment [37 CFR 1.153(a)] must include such complete and proper reply as the condition of the application may require...

In this instance, petitioner did not respond in writing to the Notice of Allowability within the three-month statutory period in accordance with 37 CFR 1.135. Consequently, the application became abandoned for failure to respond timely and properly to the outstanding Notice of Allowability. The Office reminds petitioner that it was petitioner's responsibility to submit a timely and proper response to the Notice of Allowability to save the application from abandonment. Even if petitioner questioned the accuracy of the Notice of Allowability, petitioner was required to file either an appropriate reply to the Notice or a written and signed statement setting forth any believed errors in the Notice within the three-month statutory period for response. That is, petitioner cannot choose not to respond in any manner within the set time period and expect to avoid the consequence of abandonment of the application. The Office reminds petitioner that as stated in 37 CFR 1.2, all business with the USPTO should be transacted in writing. The action of the USPTO will be based exclusively on the written record in the Office.

Unfortunately, the Office is precluded from granting the requested relief. The responsibility was that of petitioner to submit a timely and proper response to the Notice of Allowability (which could have consisted of a statement disputing its accuracy), and petitioner failed so to do. As such, the showing of record is that the abandonment resulted from the failure of petitioner to respond the Notice of Allowability. Accordingly, the application is properly held abandoned.

The Office acknowledges the change of correspondence. Additionally, the Office notes that the \$130.00 submitted on petition is unnecessary and will be refunded to the Deposit Account in due course.

Petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive the application.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Conferee: Anthony Knight, Supervisor